

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:11-cr-00086

ERSEL PRINCE JR.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is Defendant's *pro se* letter to the Court, which the Court construes as a motion to reconsider his sentence [Docket 71.]

Defendant's request implicates two sources of procedural law: Federal Rule of Criminal Procedure 35 and 18 U.S.C. § 3582.¹ Rule 35(a) of the Federal Rules of Criminal Procedure provides: "Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error." Here, Defendant's sentence was orally announced on January 12, 2012, and the written judgment order was entered January 20, 2012. His motion to reconsider was filed on the Court's docket on January 14, 2013—over a year beyond Rule 35's fourteen-day deadline.

Pursuant to 18 U.S.C. § 3582(c), a court may modify a sentence only in limited and specific circumstances: (1) upon a motion by the Bureau of Prisons ("BOP") under specified and unusual circumstances; (2) when expressly permitted by statute or Rule 35 of the Federal Rules

¹ Title 18, United States Code, section 3742 permits re-sentencing in accord with remand after a successful appellate challenge to a sentence. Because Defendant did not appeal his sentence, § 3742 has no bearing on this discussion.

of Criminal Procedure; or (3) where the United States Sentencing Commission lowered the applicable sentencing range following a defendant's initial sentencing. Based on the facts presented here, none of these circumstances exist. Thus, the Court lacks the authority to consider Defendant's motion for reconsideration and **DENIES** the motion [Docket 71].

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: June 19, 2013



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE